

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 19 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0045
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
SYDNEY MICHELE VASQUEZ,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20071157

Honorable Edgar B. Acuña, Judge

AFFIRMED AS CORRECTED

R. Lamar Couser

Tucson
Attorney for Appellant

ESPINOSA, Judge.

¶1 Following a five-day jury trial in 2010, appellant Sydney Vasquez was convicted of four counts of forgery with a credit card, theft by misrepresentation with a value of \$250 or more but less than \$1,000, fraudulent scheme and artifice, and taking the

identity of another person. *See* A.R.S. §§ 13-2104, 13-1802, 13-2310, 13-2008.¹ The trial court found Vasquez had two historical prior felony convictions and sentenced her to concurrent, presumptive sentences, the longest of which is 15.75 years, with credit for time served on the theft by misrepresentation count.

¶2 Appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel states he has reviewed the record in compliance with *Anders* without finding any meritorious issues to raise on appeal and asks us to search the record for fundamental error. Vasquez has not filed a supplemental brief.

¶3 Vasquez's convictions involved the use of a victim's credit card to purchase goods at various stores in Tucson on January 22, 2007. Viewed in the light most favorable to sustaining the verdicts, the evidence was sufficient to support each of the jury's findings of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999).

¶4 During our review of this record, however, we discovered an error in the sentencing minute entry order. On the first day of trial, defense counsel argued, and the state and the trial court agreed, that the evidence did not support aggravated taking the identity of another person pursuant to A.R.S. § 13-2009, a class three felony, as charged in the indictment. Instead, the evidence arguably supported taking the identity of another

¹We refer to the version of A.R.S. § 13-2008 in effect at the time of Vasquez's offenses. *See* 2005 Ariz. Sess. Laws, ch. 190, § 1.

person pursuant to § 13-2008, a class four felony. The court accordingly ordered the indictment amended and the jury, in fact, convicted Vasquez of that lesser felony.

¶5 At sentencing, when the court incorrectly stated Vasquez had been convicted of aggravated taking the identity of another, defense counsel corrected the court, and the court acknowledged, and the state agreed, that Vasquez had indeed been convicted of the class four felony, rather than the aggravated, class three offense. And, Vasquez was correctly sentenced for a class four felony. However, the relevant portion of the sentencing minute entry mistakenly states that Vasquez was convicted of aggravated taking the identity of another pursuant to § 13-2009. Therefore, the sentencing order shall be corrected to reflect that Vasquez was, in fact, convicted on count seven of taking the identity of another, a class four felony, pursuant to § 13-2008.

¶6 In accordance with our obligation under *Anders*, we have reviewed the record for fundamental, reversible error and have found none. Therefore, Vasquez's convictions and sentences are affirmed. The technical error in the sentencing minute entry order is corrected as set forth above.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge